

Department of State

§ 123.4

(DSP-5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

[58 FR 39299, July 22, 1993, as amended at 70 FR 50960, Aug. 29, 2005; 71 FR 20540, Apr. 21, 2006; 77 FR 22670, Apr. 17, 2012; 78 FR 22758, Apr. 16, 2013; 79 FR 61230, Oct. 10, 2014]

§ 123.2 Import jurisdiction.

The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives under the direction of the Attorney General (see 27 CFR parts 447, 478, 479, and 555).

[71 FR 20540, Apr. 21, 2006]

§ 123.3 Temporary import licenses.

(a) A license (DSP-61) issued by the Directorate of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

(1) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(2) Temporary imports of unclassified defense articles in transit to a third country;

(b) A bond may be required as appropriate (see part 125 of this subchapter for license requirements for technical data and classified defense articles.)

(c) A DSP-61 license may be obtained by a U.S. importer in satisfaction of § 123.4(c)(4) of this subchapter. If a foreign exporter requires documentation for a permanent import, the U.S. importer must contact the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives for the appropriate documentation. A DSP-61 will not be approved to support permanent import requirements.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20540, Apr. 21, 2006; 77 FR 22670, Apr. 17, 2012]

§ 123.4 Temporary import license exemptions.

(a) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval) if the item temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components, but excluding any modifications, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another item which has already been authorized by the Directorate of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of Justice and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (LOA).

NOTE: These Exceptions do not apply to shipments that transit the U.S. to or from Canada (see § 123.19 and § 126.5 of this subchapter for exceptions).

(b) Port Directors of U.S. Customs and Border Protection shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance

§ 123.5

22 CFR Ch. I (4–1–18 Edition)

or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP-5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

(c) *Requirements.* To use an exemption under § 123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in § 120.1(c) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Electronic Export Information (EEI) must be the same as the foreign consignee or end-user of record named at the time of import;

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country, area, or person listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter; and

(4) The foreign exporter must not require documentation of U.S. Government approval of the temporary import. If the foreign exporter requires documentation for a temporary import that qualifies for an exemption under this subchapter, the U.S. importer will not be able to claim the exemption and is required to obtain a DSP-61 Application/License for Temporary Import of Unclassified Defense Articles.

(d) *Procedures.* To the satisfaction of the Port Directors of U.S. Customs and Border Protection, the importer and exporter must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs and Border Protection document (e.g., Form CF 3461, 7512, 7501, 7523 or 3311) to read: “This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection),” and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, in accordance with the U.S. Customs and Border Protection (CBP) procedures, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer’s behalf, must electronically file the export information with CBP, identify 22 CFR 123.4 as the authority for the export, and provide, as requested by CBP, the entry document number or a copy of the CBP document under which the article was imported.

[58 FR 39299, July 22, 1993, as amended at 64 FR 17533, Apr. 12, 1999; 68 FR 61101, Oct. 27, 2003; 70 FR 50960, Aug. 29, 2005; 77 FR 16597, Mar. 21, 2012; 77 FR 22670, Apr. 17, 2012; 81 FR 54735, Aug. 17, 2016; 82 FR 17, Jan. 3, 2017]

§ 123.5 Temporary export licenses.

(a) The Directorate of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if the article will be exported for a period of less than 4 years and will be returned to the United States and transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Directorate of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a Port Director of U.S. Customs and Border Protection is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the Port Director of U.S. Customs and Border Protection who, upon verification, will endorse the exit column on the reverse side of the license. The license for temporary export must be electronically submitted to U.S. Customs and Border Protection, unless electronic reporting of such information is unavailable, in which case U.S. Customs and Border